



May 10, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street at Constitution Avenue  
Washington, DC 20551

Re: Proposed Amendment to Regulation V, 12 CFR Part 222; Docket No. R-1187

Dear Ms. Johnson:

The Consumer Data Industry Association (“CDIA”) respectfully submits these comments on the proposed amendment to Regulation V under the Fair Credit Reporting Act (“FCRA”), pursuant to section 217 of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”). 69 Fed. Reg. 19123 *et seq.* (April 12, 2004). The proposed amendment includes the Model Notice of Furnishing Negative Information (“Model Notice”) for use by a financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a “nationwide” consumer reporting agency described in section 603(p). As its name implies, the Model Notice may be used if the financial institution furnishes negative information regarding its credit customers to such a nationwide agency.

CDIA is an international trade association representing over 500 consumer information companies, including the nationwide consumer reporting agencies described in section 603(p) of the FCRA. Because the Model Notice will be used by financial institutions that furnish negative information to the nationwide consumer reporting agencies, the notice will pertain to information that the institutions furnish to CDIA members.

CDIA believes that the Model Notice serves the Congressional purpose of informing consumers that a financial institution may provide (or may have provided, as applicable) information to credit bureaus about an insolvency, delinquency, late payment or default on the customer’s account and that this information may be included in the customer’s credit report. We also believe that the Model Notice fulfills the Congressional intent of alerting consumers to this important information, while not imposing undue compliance burdens on banks and other creditors.

CDIA further believes that the Model Notice appropriately does not identify any particular nationwide consumer reporting agency. Because the Model Notice may be provided to the customer before the negative information is furnished to any consumer reporting agency, it would be impossible for a financial institution to indicate which agency would receive the information. To require a financial institution to identify the specific consumer reporting agency or agencies to which the negative information is furnished would violate the statutory provision that permits the notice to be given before the information is, in fact, furnished. *See* FCRA § 623(a)(7)(B)(i). For this reason, it is crucial that the final form of the Model Notice not identify any particular credit bureau to which the information may be furnished.

As the Supplementary Information recognizes, a “financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials, so long as the notice is clear and conspicuous.” 69 Fed. Reg. at 19124; FCRA § 623(a)(7)(C). CDIA understands this to mean that financial institutions will generally provide the notice with other communications to their customers and that these communications will generally include a telephone number for customers to call with questions about the notice, including the information being furnished and to whom the information is furnished.

CDIA is concerned that, if the notice is provided to customers of financial institutions without any contact information for the institution, these customers may not know who to write or call if they have questions or concerns about the notice. In addition, if consumers do not know who to contact about the notice at their financial institution, they may contact one of the nationwide consumer reporting agencies. As discussed above, the Model Notice appropriately does not identify the consumer reporting agency or agencies to which the negative information may be furnished; however, consumers may still contact a consumer reporting agency if the notice is not associated with any means of contacting the financial institution. It would serve no purpose for consumers to contact consumer reporting agencies when they receive the notice. Consumers would not know which consumer reporting agency received the negative information from the financial institution and could contact an agency that did not receive the information. Even if, by chance, the consumer did contact a consumer reporting agency to which the information was furnished, the agency would not be able to discuss the financial institution’s transactions with the institution’s own customers. For these reasons, if a financial institution provides the notice in a manner that is not associated with a means of contacting the financial institution, consumers may not be able to learn more about the information that may be furnished.

CDIA, therefore, suggests that the final regulation provide that, if the financial institution delivers the notice to its customers without indicating a means of contacting the institution, the Model Notice contain contact information for the institution. The final regulation could accomplish this result by prescribing an alternative notice for these circumstances. The alternative Model Notice could read:

We [may provide/have provided] information to credit bureaus about an insolvency, delinquency, late payment or default on your account to include in your credit report. For more information, please call 1-800-xxx-xxxx.

Because the Model Notice will be given either before or after the financial institution furnishes the negative information to a consumer reporting agency, the notice will state either “we may provide” or “we have provided” the negative information, but it will not contain both clauses. Therefore, the alternative Model Notice actually used by the financial institution will not exceed thirty words, and thus will conform to the statutory word limit for this notice. *See* FCRA § 623(a)(7)(D).

CDIA believes that this alternative notice will serve the public interest because it will assure that consumers are able to contact their financial institutions if they are not otherwise given the necessary contact information with the notice. Because CDIA believes that financial institutions will generally provide the contact information with the Model Notice, the alternative notice should not burden these institutions, and it would benefit their customers.

CDIA appreciates the opportunity to file these comments.

Sincerely yours,

Stuart K. Pratt  
President